IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12347 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FANNER INDIA LTD - Petitioner(s)

Versus

GOVINDBHAI M PARMAR - Respondent(s)

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Appearance :

MR PJ MEHTA for Petitioner(s) : 1,
MRS SANGEETA N PAHWA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/10/2005

ORAL JUDGMENT

1. In the present petition, the petitioner employer has challenged the legality of an award dated 28th June, 2001 passed by Labour Court, Ahmedabad. By the impugned award

reference of the respondent workman came to be allowed. Respondent was directed to be reinstated in service with continuity and full back wages.

2. Respondent had raised the Industrial Dispute before the Labour Court complaining about his illegal termination by the petitioner w.e.f. 17/7/1991. Before the Labour Court the stand of the petitioner was that the respondent was never engaged by the petitioner and, therefore, there was no employer employee relationship. Labour Court dis-believed the petitioner and accepted the version of the respondent. In order to come to the said conclusion, Labour Court observed that though the witness of the petitioner Ashwin Babulal in his cross-examination stated that he is prepared to produce the vouchers such vouchers were not produced before the Court. Xerox copy of these vouchers were on record which were not be admitted by the employer. Labour Court concluded that the evidence of the employer was not satisfactory. In fact it was observed that from the very outset employer has failed to establish its case and the employer has shown the tendency to prolong the reference by any means. On the basis of these observations, Labour Court concluded that there was employer employee relationship

between the parties. The Labour Court eventually declared the termination illegally setting aside the same directed reinstatement of the workman with continuity and 100% back wages.

3. Labour Court's award cannot be sustained. There was no evidence on record to establish employer employee relationship between the parties. It is preliminary duty of the workman to demonstrate the same before the Labour Court by leading proper evidence. Failure of the employer to dis-prove this cannot be utilized by the Labour Court to come to the conclusion that the reference should be allowed. The petitioner had produced several other documents which the Labour Court did not take into account. In any case failure to produce the documents though agreed could not have been conclusive. Copy of such documents were on record. Even perusing these documents and accepting them as true, Labour Court could not have held that the respondent succeeded in establishing his case of employment.

3.1 There is yet another aspect of the matter where I find Labour Court committed an error. There is no evidence on record to establish that the respondent had

worked for 240 days in 12 calender months preceeding his termination. Respondent lead no evidence in this regard. No application was filed before the Labour Court calling upon the petitioner to produce relevant evidence such as muster rolls and attendance register. In that view of the matter, I find that there was no evidence to conclude that termination of the respondent even if there was employer employee relationship, was illegal. Labour Court has not discussed this aspect of the matter at all. In the result the award is set aside. Rule is made absolute. No order as to costs.

(Akil Kureshi, J.)

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